

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 4-10-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.13803 of 2007 and M.P.No.1 of 2007

J. Sinu Simon

Petitioner

Vs.

1. The Debts Recovery Appellate Tribunal,
Chennai.

2. The Catholic Syrian Bank Limited,
Pollachi Branch,
Pollachi.

Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus, calling for the records relating to the order of the first respondent in IN-164/2007, dated 20.3.2007 and quash the same and direct the first respondent to reject the application filed in O.A.No.373 of 2003.

For Petitioner : Mrs.Narmada Sampath
1st Respondent : Tribunal
For 2nd Respondent : Mr.V.Bhiman, for
M/s.Sampath Kumar Associates

सत्यमेव जयते

O R D E R

N. PAUL VASANTHAKUMAR, J.

Petitioner seeks to quash the order passed by the Debt Recovery Appellate Tribunal, Chennai, the first respondent herein, in IN-164/2007, against the order made in I.A.No.207 of 2007 in O.A.No.373 of 2003 on the file of the Debt Recovery Tribunal, Coimbatore, and to direct the first respondent to reject the application in O.A.No.373 of 2003.

2. The brief facts necessary for disposal of the writ petition as could be seen from the pleadings are as follows:

(a) Petitioner borrowed overdraft machinery loan from second respondent Bank for his business purpose. Three persons, namely, C.V. Jose William, S.Mary and Benjamin Jacob have deposited the title deeds of their property as collateral security for the said loan. Petitioner has not borrowed any other loan from the second respondent, nor he stood as guarantor for any other loan with the second respondent.

(b) The said three persons, who stood as Guarantors have also given guarantee for sanction of the loan by M/s.J.M.Hardwares and Electricals and the petitioner has no connection with the said loan obtained by the said M/s.J.M.Hardwares and Electricals.

(c) The second respondent filed O.A.No.373 of 2003 before the Debt Recovery Tribunal, Coimbatore, for recovery of the loan amount and in the said application, the second respondent clubbed the loan amounts borrowed by the defendants 1, 3 to 5 therein along with the petitioner's loan amount. Petitioner was arrayed as third defendant in the said application.

(d) The total outstanding loan amount of the petitioner is much less than Rs.10.00 lakhs. Similarly, it appears that the claim amount against the said M/s.J.M.Hardwares & Electricals is also less than Rs.10.00 lakhs as could be seen from the application. However, the second respondent clubbed the alleged debts of different persons and totalled them so as to show that the amount due in the said original application is above Rs.10.00 lakhs, to make out the pecuniary jurisdiction before the Debt Recovery Tribunal.

(e) Petitioner filed I.A.No.207 of 2003 in O.A.No.373 of 2003 before the Debt Recovery Tribunal, Coimbatore, and prayed for dismissing the said Original application as it is not maintainable before the Debt Recovery Tribunal as the claim amount even according to the application against the petitioner, is only a sum of Rs.4,84,746/- and his loan is a separate one and his business is in no way connected with M/s.J.M.Hardwares & Electricals, against whom another due is claimed.

(f) Another ground taken in the writ petition is that though the said three persons stood as Guarantors for the loan obtained by the petitioner and the first defendant, the property which was given as collateral security for the loan obtained by M/s.J.M.Hardware & Electricals is 'A' schedule property and the property given as collateral security to the loan obtained by the petitioner by the said three persons is 'B' schedule property and therefore the two independent loan amounts obtained by two different persons cannot be clubbed together for the purpose of conferring pecuniary jurisdiction to the Debt Recovery Tribunal.

(g) The said I.A.No.207 of 2007 was dismissed by the Debt Recovery Tribunal on 21.2.2007 by holding that the said prayer can be agitated at the time of arguments in the main original application itself. As against the said rejection of I.A.No.207 of 2003 on 21.2.2007, petitioner has preferred appeal before the Debt Recovery Appellate Tribunal, the first respondent herein and the first respondent dismissed the appeal on 20.3.2007 and as against which the present writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that unless the recovery amount exceeds Rs.10 lakhs, the Debt Recovery Tribunal has no pecuniary jurisdiction to entertain the application and the petitioner having secured the loan, which has no connection with the other loan obtained by M/s.J&M Hardwares & Electricals, the Bank cannot club both the loan amounts together to show pecuniary jurisdiction of the Debt Recovery Tribunal. The Preliminary issue raised before the Debt Recovery Tribunal was not decided by the Tribunal and the same being a legal and jurisdictional issue, shall be resolved in the first instance and the Debt Recovery Appellate Tribunal in a cryptic order, dismissed the appeal by holding that the Bank has prima facie made out that the total claim amount exceeds more than Rs.10 lakhs and therefore the Debt Recovery Tribunal has got pecuniary jurisdiction. The learned counsel also cited the judgments of the Supreme Court reported in (2002) 4 SCC 275 (Union of India v. Delhi High Court Bar Association) and (2005) 4 SCC 315 (Vithalbhai (P) Ltd. v. Union Bank of India) in support of her contention and argued that the pecuniary jurisdiction being the legal issue shall be decided first before going into the contentions raised in the original application on merits.

4. The learned counsel appearing for the second respondent Bank on the other hand submitted that the question of pecuniary jurisdiction can be ascertained only after analysing the factual aspects and the said facts cannot be gone into in the writ jurisdiction under Article 226 of the Constitution of India and prayed for leaving the issue left open to be decided by the Debt Recovery Tribunal. In support of his submissions, the learned counsel cited the decisions reported in AIR 1998 Karnataka 249 (M/s.Jay Jee Service Station, Bangalore v. M/s.Syndicate Bank); AIR 2002 Karnataka 56 (M/s.Samrat Ashok Exports Ltd. v. Assistant Provident Fund Commissioner); and 1998 (Vol.92) Company Cases 782 (Smt.Gerty Suvarna v. Union of India).

5. We have considered the rival submissions made by the learned counsel appearing for the petitioner as well as second respondent.

6. The point for consideration in this writ petition is whether the Debt Recovery Tribunal, Coimbatore, is having pecuniary jurisdiction to entertain O.A.No.373 of 2003 and whether the second respondent Bank is justified in clubbing the claim amount of Rs.8,97,856/- from defendants 1 and 2 and the sum of Rs.4,87,746/- (loan raised by the petitioner) from defendants 2 to 5.

7. Section 19 of the Recovery of Debts due to Banks & Financial Institutions Act, 1993 (Act 51 of 1993) enables the Bank or Financial Institution to file an application to recover any debt from any person. Sub-section (4) of Section 1 of the Act states that the provisions of the Act shall not apply where the amount of debt due to any Bank or Financial Institution is less than Rs.10 lakhs. From the above provisions it is

clear that if the recovery amount due is more than Rs.10 lakhs, application can be filed before the Debt Recovery Tribunal under section 19 of Act 51 of 1993.

8. In the above background, we have to analyse as to whether the original application filed by the Bank before the Debt Recovery Tribunal, Coimbatore, is maintainable and whether the amount satisfies the pecuniary jurisdiction for the application to be tried by the Debt Recovery Tribunal.

9. The facts in this case are not in dispute. From the perusal of O.A.No.373 of 2003 we could see that the loan was sanctioned by the Bank to M/s.J&M Hardwares & Electricals in the year 1996 and for the said loan, defendants 2, 4 and 5 stood as Guarantors giving 'A' schedule property as collateral security. Insofar as the loan obtained by the petitioner is concerned, it was sanctioned in the year 1999, for which also the defendants 2, 4 and 5 stood as Guarantors by giving collateral security of 'B' Schedule property. The loans were obtained by the said parties for different purposes and not for any joint business/purpose. Even though the Guarantors for both the loans are same, security furnished to the said loans are different viz., 'A' schedule and 'B' Schedule properties. In the amount due column in the original application, it is stated as follows:

"7. AMOUNT DUE

S.No.	FACILITY AVAILED BY	AMOUNT DUE AS ON 10.11.03
01	1st Defendant OD Machinery	Rs. 8,97,856/-
02	3rd Defendant OD Machinery	Rs. 4,84,746/-
TOTAL		Rs.13,82,602/-

The relief sought for are also different, which reads thus,

"(A) Ordering that the defendants 1 and 2 are jointly and severally liable to pay the applicant bank the sum of Rs.8,97,856/- (Rupees Eight Lacs Ninety Seven thousand Eight hundred and Fifty Six only) together with interest at 17% per annum with quarterly rests including penal interest at 1% per annum thereon from the date of this application (11.11.03) till date of realisation;

(B) Ordering that the defendants 2 to 5 are liable jointly and severally to pay the applicant the sum of Rs.4,84,746/- (Rupees Four Lacs Eighty Four Thousand Seven Hundred and Forty Six only) together with future interest thereon at 17% per annum at quarterly rests and penal interest at the rate of 1% per annum from the date of this application till date of realisation."

In view of the above said facts, which are apparent on the face of the records, we have no hesitation to hold that the Bank has filed the original application by clubbing both the debts to arrive at the total

claim amount over and above Rs.10 lakhs, so that Debt Recovery Tribunal will have pecuniary jurisdiction. Since the prayers made in the original application (A & B) are different and the persons availed the loans are also different, the said loans cannot be clubbed together for the purpose of recovery. We are of the view that the claim petition filed by the Bank before the Debt Recovery Tribunal is not maintainable as the individual amounts to be recovered are less than Rs.10 lakhs.

10. In the case decided by the learned single Judge of the Karnataka High Court in AIR 1998 Karnataka 249 (M/s.Jay Jee Service Station, Bangalore v. M/s.Syndicate Bank), suit filed for recovery of Rs.13,38,263.45 before the Civil Court against a single borrower against a loan and overdraft on two sets of documents separately executed, was transferred and numbered as original application and on the basis of the same it was held that original application was maintainable. In the decision reported in AIR 2002 Karnataka 56 (M/s.Samrat Ashok Exports Ltd. v. Assistant Provident Fund Commissioner) a partnership firm obtained loan and overdraft facility and partners stood as guarantors for both and hence the Court calculated the debt as defined in section 2(g) of the Act and held that single original application can be filed. In 1998 (Vol.92) Company Cases 782 (Smt.Gerty Suvarna v. Union of India) a single person secured housing and car loan by depositing the same title deed. Hence the Bank filed single original application to recover the amounts due. Hence the decisions cited by the learned counsel for the second respondent have no application to the facts of this case as explained supra.

11. The contention of the second respondent that the jurisdictional aspect can be decided only after going into the facts by the Debt Recovery Tribunal cannot be sustained in view of the fact that the facts are not in dispute and the preliminary objection raised can be decided at the earliest point of time without any other evidence.

12. (a) In the decision reported in (2005) 4 SCC 315 (Vithalbhai (P) Ltd. v. Union Bank of India), the Supreme Court in paragraph 22 held as follows,

"22. We may now briefly sum up the correct position of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the court; the court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the court to grant decree or not. The court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed

a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases: (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See *Samar Singh v. Kedar Nath* (1987 Supp SCC 663)). One more category of suits which may be added to the above, is: where leave of the court or some authority is mandatorily required to be obtained before the institution of the suit and was not so obtained."

In the above decision it is held that the preliminary objection should be raised at the earliest and the court is bound to consider the same if it is raised. Paragraph 18 of the decision can be usefully referred to for the said proposition, which reads thus,

"18. In *Samar Singh v. Kedar Nath* (1987 Supp SCC 663) this Court while dealing with an election petition has held that the power to summarily reject conferred by Order 7 Rule 11 of the Code of Civil Procedure can be

exercised at the threshold of the proceedings and is also available, in the absence of any restriction statutorily placed, to be exercised at any stage of subsequent proceedings. However, the Court has also emphasised the need of raising a preliminary objection as to maintainability as early as possible though the power of the court to consider the same at a subsequent stage is not taken away."

(b) The pecuniary jurisdiction of the Debt Recovery Tribunal for filing applications under section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the object behind the same was considered by the Supreme Court in the decision reported in (2002) 4 SCC 275 (Union of India v. Delhi High Court Bar Association and others). Paragraph 27 of the Judgment reads as follows:

"27. With regard to the observations of the Delhi High Court in relation to the pecuniary jurisdiction of the Tribunals and of the Delhi High Court, the Act has been enacted for the whole of India. In most of the States, the High Courts do not have original jurisdiction. In order to see that the Tribunal is not flooded with cases where the amounts involved are not very large, the Act provides that it is only where the recovery of the money is more than Rs.10 lakhs that the Tribunal will have the jurisdiction to entertain the application under Section 19. With respect to suits for recovery of money less than Rs.10 lakhs, it is the subordinate courts which would continue to try them. In other words, for a claim of Rs.10 lakhs or more, exclusive jurisdiction has been conferred on the Tribunal but for any amount less than Rs.10 lakhs, it is the ordinary civil courts which will have jurisdiction. The bifurcation of original jurisdiction between the Delhi High Court and the subordinate courts is a matter which cannot have any bearing on the validity of the establishment of the Tribunal. It is only in those High Courts which have original jurisdiction that an anomalous situation arises where suits for recovery of money less than Rs.10 lakhs have to be decided by the High Courts while the Tribunals have jurisdiction to decide suits for recovery of more than Rs.10 lakhs. This incongruous situation, which can be remedied by the High Court divesting itself of the original jurisdiction in regard to such claims and vesting the said jurisdiction with the subordinate courts or vice versa, cannot be a ground for holding that the Act is invalid."

Thus, it is manifestly clear that the Debt Recovery Tribunal, Coimbatore, has no pecuniary jurisdiction to entertain the original application.

13. Yet another fact which we could see in this writ petition is, even though the Debt Recovery Tribunal left open the issue to be decided at the time of Trial, the Debt Recovery Appellate Tribunal closed the issue by its order dated 20.3.2007 and the said order reads as follows:

"2. The Appellant filed an Application before the DRT, Coimbatore, praying to dismiss the OA on the ground that there was no pecuniary jurisdiction to try the claim of the Bank in the OA. The OA copy is available from Pages 9 to 19 of the typeset. On going through the prayer A & B in Para-9 of the OA, it is prima facie made out that the total amount exceeds more than Rs.10 lakhs and, therefore, the DRT has got pecuniary jurisdiction. The Appellant's contention is baseless.

3. Appeal is dismissed."

The appellate Tribunal having given such a finding no-one can expect the Debt Recovery Tribunal, which is a lower Forum, to decide the issue of pecuniary jurisdiction at a later stage.

14. In view of the above findings, we set aside the orders passed by the Debt Recovery Tribunal dated 21.2.2007 in I.A.No.207 of 2007 in O.A.No.373 of 2003 and that of the Debt Recovery Appellate Tribunal dated 20.3.2007 in IN-164 of 2007 and uphold the preliminary objection raised in I.A.No.207 of 2007 in O.A.No.373 of 1993.

The writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

The Debts Recovery Appellate Tribunal, Chennai.

1 cc To M/s.Sampathkumar Associates, Advocate, SR.61724.

W.P.No.13803 of 2007

TS (CO)
RVL 10.10.2007